TENNESSEE BOARD OF PHARMACY SEPTEMBER 24 - 25, 2002 ROOM 160 - DAVY CROCKETT TOWER NASHVILLE, TENNESSEE

BOARD MEMBERS PRESENT:

STAFF PRESENT:

Alan Corley, President
Forrest Parmley, Vice President
Barbara McAndrew, Public Member
Robert Shutt, Member
Reggie Dilliard, Member
Julie Frazier, Member
Sheila Mitchell, Member

Kendall Lynch, Director Alison Zane, Legal Counsel Martha Agee, Board Administrator John Beauregard, Pharmacist Investigator Terrence Cannada, Pharmacist Investigator Harry Fuqua, Pharmacist Investigator Richard Hadden, Pharmacist Investigator Ralph Staton, Pharmacist Investigator

The Tennessee Board of Pharmacy convened on Tuesday, September 24, 2002, in Room 160 of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. A quorum of the members being present, the meeting was called to order at 9:07 a.m. CDT by Dr. Alan Corley, President.

Mr. Cecil Ross, legal counsel with the Department of Commerce and Insurance, informed the members of the Pharmacy Board that he had been reassigned to other boards within the Regulatory Division. Mr. Ross stated it has been an honor and pleasure to work with the Pharmacy Board and expressed appreciation for the opportunity to be of service. Director Kendall Lynch, on behalf of the staff, expressed appreciation for Mr. Ross' contributions to the Board and welcomed the new legal counsel, Ms. Alison Zane.

President Alan Corley welcomed the new board member, Dr. Sheila Mitchell. Director Kendall Lynch also welcomed Dr. Mitchell to the pharmacy board, on behalf of the staff.

Director Kendall Lynch introduced three (3) fourth year students who are currently completing their rotations.

RECIPROCAL EXAMINATION

The Jurisprudence Examination was administered to forty (40) applicants, beginning at 10:00 a.m. CDT on Tuesday, September 24, 2002. The examination was administered by Pharmacy Board Investigators. All of the applicants successfully completed the examination, were interviewed by the Board and approved for licensure.

SCORE TRANSFER/NAPLEX JURISPRUDENCE EXAMINATION

The Jurisprudence Examination was administered to four (4) Score Transfer examinees, seven (7) NAPLEX examinees, and two (2) reinstatement examinees in Room 640 of the Davy Crockett Tower at 10:00 a.m. CDT on Tuesday, September 24, 2002. The examination was administered by the Pharmacy Board Investigators. All of the applicants successfully completed the Jurisprudence Exam.

APPROVAL OF THE MINUTES

The minutes of the July 10 - 11, 2002 board meeting were presented and reviewed by the Board. Dr. Alan Corley noted on page 3, paragraph 1, it states, "three (3) meetings a day" and should reflect "three (3) meetings a week". On page 10, the second sentence from the bottom, it states, "approximately 6,000 prescriptions of which were for controlled substances", should reflect "approximately 6,000 prescriptions of which 90% were for controlled substances". Mrs. Barbara McAndrew motioned to approve the minutes with the corrections noted; seconded by Dr. Reggie Dilliard. Dr. Robert Shutt was attending board business and did not vote. The motion carried.

The minutes of the Teleconference conducted on August 28, 2002, were presented and reviewed by the Board. Mrs. Barbara McAndrew noted on page 1, second sentence at the end of

paragraph 1, it states, "through his employment and cause any further harm to the public through his unlawful and dangerous conduct." Mrs. McAndrew stated to delete the word "further" and insert the word "alleged" before unlawful, as the pharmacist had not been convicted. The sentence will read, "through his employment and cause any harm to the public through his alleged unlawful and dangerous conduct." On page 2, paragraph 2, sentence 2, it states, "The justification ...as the pharmacist's actions propose a threat ...". Mrs. McAndrew stated to insert the word "alleged" after pharmacist's; delete the word "propose" and insert the word "pose". The sentence will read, "The justification ...as the pharmacist's alleged actions pose a threat ...".

Dr. Forrest Parmley motioned to approve the Teleconference minutes as corrected; seconded by Dr. Julie Frazier. Dr. Robert Shutt was attending board business and did not vote. The motion carried.

The minutes of the Teleconference conducted on September 6, 2002, were presented and reviewed by the Board. Dr. Forrest Parmley motioned to approve the September 6, 2002

Teleconference minutes; seconded by Dr. Julie Frazier. Dr. Robert Shutt was attending board business and did not vote. The motion carried.

DONALD EVANS, DPH #449 – REQUEST FOR REINSTATEMENT OF LICENSE NASHVILLE, TN

Dr. Donald Evans appeared before the Board to request reinstatement of his pharmacist license. Dr. Mike Matheny and Dr. Morris Haddox with TPRN advocated on his behalf. On February 14, 2002, Dr. Evans met in Director Lynch's office and surrendered his license. Dr. Evans stated in 1990/'91 he went to Charter Lakeside but did not take the program seriously. In January, 2002, Dr. Evans realized he needed help and was in treatment from February, 2002 to May 29, 2002. Dr. Evans feels open-minded and is willing to accept the requirements of the

program. Dr. Evans has completed the 90/90 and has the support of his family, friends and sponsor. Dr. Mike Matheny stated Dr. Evans has complied with the TPRN requirements and attends Monday night meetings each week. After board discussion, Dr. Reggie Dilliard motioned to:

- 1. Respondent does hereby agree to the reinstatement of license number <u>449</u> with the following probationary conditions. Said probation shall remain in effect for a period of five (5) years:
- (a) The Respondent shall completely abstain from the consumption of alcohol and controlled substances, except as prescribed by a duly licensed practitioner for a legitimate purpose.
- (b) The Respondent shall consume no medications unless they are prescribed by his primary physician, <u>Henry Harrell, MD</u>. The Respondent shall immediately notify the Board office of the name of his primary physician each time the Respondent changes primary physicians.
- (c) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment.
- (d) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement).
- (e) The Respondent shall be subject to perpetual, random sampling of urine, blood or bodily tissues, at his own expense, by agents of the Board.

- (f) Should any sampling indicate the presence of drugs for which the Respondent does not have a valid prescription, a show cause order will be issued to determine why the probation and the Respondent's license should not be immediately revoked.
- (g) The Respondent shall comply with all the terms and conditions of the extended aftercare contract he entered into with <u>Tennessee Pharmacists Recovery Network.</u>

 Respondent shall return a copy of said contract with this Consent Order to the Board office.
- (h) The Respondent will not serve as pharmacist in charge for a period of three (3) years, however, after a period of two (2) years, may petition the Board for a modification of this Order to remove the restrictions upon a show of good cause.
 - (i) If the license has been inactive, delinquent, suspended or revoked:

 ①Less than one (1) year, the pharmacist shall:
 - 1. Provide written notice requesting an active license.
 - 2. Satisfy all past due continuing pharmaceutical education.
 - 3. Pay all cumulative license renewal fees and any applicable penalties.

Dr. Robert Shutt seconded the motion. Dr. Forrest Parmley abstained from voting. The motion carried.

MUKESHKUMAR B. PATEL 6041 Port AnadarkoTrail Hermitage, TN 37076

Mr. Mukeshkumar Patel personally appeared before the Board to request consideration of Rule 1140-1-.05 (4) relevant to the Test of Spoken English (TSE), which is a part of the FPGEE certification for foreign graduates. Tennessee accepts the NABP established passing score of "50" while some other states accept a lower score. Mr. Patel would like for the board to accept the "45" score which he has obtained. If the waiver is granted, Mr. Patel understands that he

would not be a candidate for reciprocity. Ms. Alison Zane, legal counsel for the Board, stated Rule 1140-1-.05 (4) reads, "In addition to paragraph (1) of this rule, a pharmacy foreign graduate "shall" successfully complete the foreign pharmacy equivalency examination, the Test of Spoken English (TSE) and any other requirements established by NABP." Ms. Zane advised "shall" is mandatory language and means it shall be complied with by the requirement. NABP's requirement was established as "50" by the executive committee, however, Michigan and Florida accept scores of "45". Dr. Julie Frazier motioned to table the waiver of the rule until the November 19 – 20, 2002 board meeting; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried. Dr. Alan Corley stated legal counsel, Alison Zane would investigate if the score is not favorable.

TRACY HOOTEN, DPH 615 S. Sanga Road Cordova, TN 38018

Dr. Tracy Hooten is requesting a waiver of Rule 1140-5-.01 relevant to the documentation of thirty (30) hours of continuing education for renewal of her pharmacist license. Dr. Forrest Parmley motioned to grant the waiver for six (6) months to turn in the CE's due to her hardship. Dr. Robert Shutt seconded the motion. All were in favor and the motion carried.

REGINA THIGPEN, RPH THE ROY LESTER SCHNEIDER HOSPITAL 9048 Sugar Estate Street St. Thomas, VI 00802

Dr. Regina Thigpen is requesting a waiver of Rule 1140-1-.07 (3) (c) (3) and (5) relevant to taking the NAPLEX exam for licensees whose license were inactive for more than five (5) consecutive years and completing a period of pharmacy internship of three hundred twenty (320) hours. Dr. Thigpen returned to Mississippi and did not renew her Tennessee license.

Dr. Thigpen was required to take the NAPLEX in the Virgin Islands in order to obtain a permanent license and successfully completed the NAPLEX exam in November, 2000.

Dr. Thigpen is also requesting that the Board accept the sixteen (16) years of experience in lieu of the required pharmacy internship of three hundred twenty (320) hours. Dr. Reggie Dilliard motioned to grant the request for internship and verify if Director Kendall Lynch foresees any problems or rules pertaining to the NAPLEX. Dr. Julie Frazier seconded the motion. All were in favor and the motion carried.

ROBERT T. PHELAN, DPH WAVERLY PRESCRIPTION SHOPPE, INC. 205 E. Main Street Waverly, TN 37185

Dr. Robert Phelan is requesting a waiver of Rule 1140-3-.14 (12) referencing the pharmacist-incharge provision at two (2) locations. Dr. Phelan is currently the PIC at Waverly Prescription Shoppe and is requesting to be PIC at Herbison's Medical DME Pharmacy, in McEwen, Tennessee, which handles oral inhalation drugs. The Board requested Director Lynch to check the proximity of the two locations, which was less than a mile. Dr. Forrest Parmley motioned to grant the waiver request; seconded by Dr. Julie Frazier. Dr. Robert Shutt was out of the room and did not vote. The motion carried. Dr. Alan Corley advised Director Lynch to state in the letter that the pharmacy is not to be open without the presence of a pharmacist.

MIKE HARDY, DPH C & M PHARMACY 717 North Military Avenue Lawrenceburg, TN 38464

Dr. Mike Hardy is requested a waiver of the Board of Pharmacy Rule 1140-3-.14 (12) relevant to being the pharmacist-in-charge at more than one (1) location. Dr. Hardy is currently the PIC at C & M Pharmacy in Lawrenceburg, Tennessee and is requesting to be PIC at Baptist Hickman

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Hospital, a hospital/nursing home in Centerville, Tennessee. Dr. Reggie Dilliard motioned to

approve the waiver; seconded by Mrs. Barbara McAndrew. Dr. Robert Shutt was out of the

room and did not vote. The motion carried.

JO ANN WATTS, DPH

312 Creekside Lane

Gardendale, AL 35071

Dr. Jo Ann Watts is requesting a waiver of Rule 1140-1-.07 (3) (b) (3) relevant to taking the

Jurisprudence Exam as Dr. Watts' license expired August 31, 2001 and contacted the Board

office on September 13, 2002 to inquire about renewing. Dr. Watts had experienced several

family crises in the past two years and neglected to submit a change of address. Mrs. Barbara

McAndrew motioned to deny the request; seconded by Dr. Robert Shutt. All were in favor and

the motion carried.

PRESCOTT C. FISHER, III, DPH

10204 Cypress Links Drive

Tampa, FL 33647

Dr. Prescott Fisher is requesting a waiver of Rule 1140-1-.07 (3) (b) (5) (i) referencing the

completion of a period of pharmacy internship for licenses that have been expired from one (1)

year to not more than five (5) consecutive years. Dr. Fisher's license expired October 31, 1999.

Dr. Fisher is currently working as a hospital representative in Florida, is teaching and writing

journals. Director Lynch stated the description of Dr. Fisher's employment falls under the

practice of pharmacy pursuant to T. C. A. §63-10-404 (31) (A). Dr. Robert Shutt motioned to

grant the waiver for the internship hours only; seconded by Dr. Reggie Dilliard. All were in

favor and the motion carried.

JANE PAYSINGER, DPH

Box 50, Baptist Medical Centre Nalerigu via Gambaga N/R Ghana

Dr. Jane Paysinger is requesting a waiver of Rule 1140-5-.01 relevant to the fifteen (15) Live ACPE continuing education hours. Dr. Paysinger is currently working and residing in West Africa and is unable to obtain the Live ACPE hours needed for renewal of her pharmacist license. Dr. Reggie Dilliard motioned **to grant the waiver request for this license cycle only**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

CONSENT ORDERS

MARTHA A. BRYANT, DPH #1461

3500 Wedgewood Drive Morristown, TN 37814

Ms. Alison Zane, legal counsel, presented a Consent Order for Dr. Martha Bryant whereas she acknowledges being chemical dependent. Dr. Bryant surrendered her license, signed and dated the Consent Order – July 13, 2002. Dr. Robert Shutt motioned **to accept** the Consent Order; seconded by Dr. Reggie Dilliard. All were in favor and the motion carried.

NEWTON HUNTER CULBERTSON, DPH #6086

1300 Cedar Lane #G-6 Tullahoma, TN 37388

Legal counsel, Ms. Alison Zane, presented a Consent Order for chemical dependency for Dr.

Newton Culbertson. Dr. Julie Frazier motioned to accept the Consent Order; seconded by Dr.

Reggie Dilliard. All were in favor and the motion carried.

#200104633

JACK CUNNINGHAM, DPH #2876

Flippin Drug Company 3107 Highland Street

Milan, TN 38358

Ms. Alison Zane, legal counsel, presented the Consent Order whereas Dr. Jack Cunningham was

in violation of Rule 1140-3-.07 relevant to the prescription department being closed during the

absence of the pharmacist. Dr. Cunningham was assessed a civil penalty of \$250. Dr. Reggie

Dilliard motioned to accept the Consent Order; seconded by Dr. Julie Frazier. All were in favor

and the motion carried.

MICHAEL DECHRISTOFARO, DPH #10739

568 Milo Webb Drive

Crossville, TN 38555

Legal counsel, Ms. Alison Zane, presented a Consent Order for Reinstatement of License for Dr.

Michael DeChristofaro. Dr. DeChristofaro signed and dated the Consent Order – July 31, 2002.

Dr. Robert Shutt motioned **to accept** the consent order; seconded by Mrs. Barbara McAndrew.

All were in favor and the motion carried.

RONALD DUNIVAN, DPH #5515

116 Morton Drive

Fayetteville, TN 37334

Ms. Alison Zane, legal counsel for the Board of Pharmacy, presented a Consent Order for

the issuance of Dr. Ronald Dunivan's pharmacist license. Dr. Dunivan is to submit monthly

reports confirming compliance with his treatment program. Dr. Reggie Dilliard motioned to

accept the Consent Order; seconded by Dr. Forrest Parmley. All were in favor and the motion

carried.

KIRK S. ETHRIDGE, DPH #7043

258 Speedwell Lane

Bulls Gap, TN 37711

Ms. Alison Zane, legal counsel, presented a Consent Order for the voluntary surrender of Dr.

Kirk Ethridge's license due to chemical dependency. Dr. Ethridge signed and dated the Consent

Order – July 30, 2002. Dr. Julie Frazier motioned to accept the Consent Order; seconded by Dr.

Robert Shutt. All were in favor and the motion carried.

MICHAEL FREEMAN, DPH #10276

9520 Meade Street

Westminster, CO 80031

Legal counsel, Ms. Alison Zane, presented a Consent Order for Dr. Michael Freeman who was in

violation of T.C.A. §63-10-506, relevant to engaging in the practice of pharmacy without being

currently licensed. Dr. Freeman was assessed a civil penalty of \$300 in addition to obtaining an

additional six (6) hours of Live ACPE continuing education during the next calendar year. Dr.

Robert Shutt motioned to accept the Consent Order; seconded by Mrs. Barbara McAndrew. All

were in favor and the motion carried.

ROBERT PEARSALL, DPH #7204

7325 Crown Road

Knoxville, TN 37918

A Consent Order for Reinstatement of License for Dr. Robert Pearsall was presented by legal

counsel, Ms. Alison Zane. Dr. Pearsall signed and dated the Consent Order – July 22, 2002.

Mrs. Barbara McAndrew motioned to accept the Consent Order; seconded by Dr. Reggie

Dilliard. All were in favor and the motion carried.

TINA RENEE POSEY, DPH #10977

2244 Cooks Road

Mt. Juliet, TN 37122

A Consent Order for revocation of license due to chemical dependency was presented by legal

counsel, Ms. Alison Zane for Dr. Tina Posey. Dr. Posey signed and dated the Consent Order –

July 20, 2002. Dr. Julie Frazier motioned to accept the Consent Order; seconded by Dr. Reggie

Dilliard. All were in favor and the motion carried.

DONNA L. SHEPARD, DPH #6297

406 N. Porter Street

Winchester, TN 37398

Ms. Alison Zane, counsel for the Board of Pharmacy, presented a Consent Order for

Reinstatement of License for Dr. Donna Shepard. Dr. Shepard signed and dated the Consent

Order – July 23, 2002. Dr. Reggie Dilliard motioned to accept the Consent Order; seconded by

Dr. Robert Shutt. All were in favor and the motion carried.

#949596

THE MEDICINE SHOPPE

License #0430

247 W. Main Street

Hendersonville, TN 37075

Ms. AlisonZane, legal counsel, advised the Board that the pharmacist was filling prescriptions

without offering to counsel. The pharmacist's attorney made a counteroffer for the pharmacy to

pay the civil penalty of \$600 and to eliminate the pharmacist's name. The offer was accepted by

the Board on May 16 – 17, 2000. The civil penalty fees have been received. Dr. Robert Shutt

motioned to accept the Consent Order; seconded by Dr. Reggie Dilliard. All were in favor and

the motion carried.

JOSEPH P. AURALLE, DPH

5636 Dorrell Lane

Las Vegas, NV 89131

Dr. Joseph Auralle, a reciprocal candidate, has submitted a letter dated July 15, 2002, asking the

Board of Pharmacy to reconsider their action taken on July 10, 2002, regarding his reciprocity

application. Legal counsel, Alison Zane stated the Board denied the request for licensure. Dr.

Auralle is requesting that the language be changed in order to avoid further problems in other

states when applying for application by reciprocity from Nevada. Dr. Auralle was disciplined by

the Nevada board. The California and Illinois Boards took action against his license pursuant to

the Nevada action and those actions remain unresolved. The Board took no action and

reaffirmed their former action.

BUFORD NEELY, DPH #4567

15051 N. Big Hill Road

Gulfport, MS 39503

Ms. Alison Zane, counsel for the Board, stated the Board office has received notification that Dr.

Buford Neely had been disciplined in Mississippi. Dr. Neely's license in Tennessee is not

current and he is asking for reinstatement of his license. The Tennessee license shall be subject

to the same action as stated by the Mississippi Board. The Mississippi Board's Consent Order

placed Dr. Neely on probation for a period of five (5) years;

1. The licensee shall abstain from the use of alcohol or the unauthorized use of

controlled substances or other habit forming drugs;

2. That for an indefinite period of time, shall submit a urine specimen;

3. That for an indefinite period of time, shall submit a serum specimen;

4. The licensee is to keep the Board informed of his place of employment, and to submit a quarterly report in writing detailing personal and professional well

being:

5. Licensee shall not take any drugs which has not been prescribed for him;

6. Licensee shall be in compliance with all state and federal laws and regulations

relating to the practice of pharmacy and the dispensing of drugs, and:

7. Licensee shall be in compliance with all conditions of his probation.

Dr. Forrest Parmley motioned to reinstate Dr. Buford Neely's license to mirror the Mississippi Board's Consent Order and to state, should the Respondent return to the practice of pharmacy in the State of Tennessee, the Respondent shall enter into a contract with the Tennessee Pharmacist Recovery Network (TPRN). Mrs. Barbara McAndrew seconded the motion. All were in favor and the motion carried.

DIRECTOR'S REPORT

PHARMACIST SALARY SURVEY

Director Kendall Lynch discussed with the members of the Board the pharmacist investigator's salaries. Dr. Lynch noted pursuant to T. C. A. §63-10-507 (b), Tennessee requires the investigators to be a pharmacist, as some states do not require their investigators to be pharmacists. Dr. Lynch stated during the 2002 legislative session, the appropriation Bill allowed a three percent (3%) to become effective January 1, 2003. Dr. Robert Shutt motioned to prepare a statement to Dr. Alan Corley for an increase in pharmacist's salary. Dr. Sheila Mitchell seconded the motion. All were in favor and the motion carried.

TENNESSEE DEPARTMENT OF HEALTH PUBLIC CHAPTER 840

Director Kendall Lynch stated under Public Chapter 840 it allows for a committee to be established for the Controlled Substance Monitoring Act of 2002. Without objection, President Corley appointed Mrs. Barbara McAndrew and Dr. Julie Frazier to the committee. The committee personnel will be responsible for writing rules and notifying the legislature of their actions.

OUT OF STATE TRAVEL

Director Kendall Lynch informed the Board that two (2) members will be allowed two (2) out-of-state meetings per fiscal year. In-state travel should not pose a problem.

AMERICAN COUNCIL ON PHARMACEUTICAL EDUCATION PROPOSED DEFINITION OF CONTINUING EDUCATION

The American Council on Pharmaceutical Education is requesting comments for a proposed definition of continuing education from state boards of pharmacy. This matter was deferred.

E-MAIL INQUIRY DATED SEPTEMBER 3, 2002 PAULA HINSON, DPH

Dr. Paula Hinson submitted an e-mail inquiry to determine if a physician in the Knoxville area had been reported to the Board of Medical Examiners after a teleconference was conducted by the Board to summarily suspend a pharmacist' license. Director Kendall Lynch stated the physician involved was reported to the Board of Medical Examiners by the Board of Pharmacy on March 23, 2000.

UNIVERSITY OF TENNESSEE COLLEGE OF PHARMACY ACPE ACCREDITATION PROCESS

Dr. Alan Corley gave the board a short update concerning his participation in the ACPE accreditation held in Memphis, Tennessee at the University of Tennessee College of Pharmacy.

FAILURE OF NAPLEX (THIRD ATTEMPT) – FOREIGN GRADUATES

Director Kendall Lynch advised the Board that two (2) foreign graduates have failed the NAPLEX at their third attempt. Pursuant to Board of Pharmacy Rule 1140-1-.05 (5), it states, "If an applicant should fail the NAPLEX or Jurisprudence examination three (3) times, the applicant may be required to take review courses as approved by the board prior to reexamination." Dr. Julie Frazier motioned to recommend that these two (2) applicants take

some type of educational course subject to Director Kendall Lynch's approval of the course. Dr. Sheila Mitchell seconded the motion. Dr. Robert Shutt was attending other board business and did not vote. The motion carried.

NATIONAL ASSOCIATION OF BOARDS OF PHARMACY (NABP)
FOREIGN PHARMACY GRADUATE EXAMINATION COMMITTEE® CHANGES
PHARMACY CURRICULUM REQUIREMENT

Director Kendall Lynch advised the Board effective January 1, 2003, the National Association of Boards of Pharmacy® (NABP®) will require foreign-educated pharmacists to earn their degree from a five-year curriculum program in order to apply for the Foreign Pharmacy Graduate Examination committee® (FPGEC®) Certification.

NATIONAL ASSOCIATION OF BOARDS OF PHARMACY (NABP) NAPLEX/MPJE FEE INCREASES

Director Kendall Lynch stated the National Association of Boards of Pharmacy recently received notification from Chauncey Group International, NABP's testing vendor, that sitting fees will increase for the North American Pharmacists Licensure ExaminationTM (NAPLEX ®) and the Multistate Pharmacy Jurisprudence ExaminationTM (MPJE®).

Effective January 1, 2003, NAPLEX candidates will pay a base fee of \$300 and a \$130 vendor administrative fee for a total registration fee of \$430. Applicants registering for the MPJE will pay a \$110 base fee and a \$60 vendor administrative fee for a total of \$170.

PUBLIC ACTS, 2002 CHAPTER NO. 657 SENATE BILL NO. 3141

Dr. Kendall Lynch, director, stated Public Chapter No. 657 amended Tennessee Code Annotated, Titles 39, 53 and 63, which is relative to the abuse of Oxycontin. On or before January 15, 2003, the Tennessee Bureau of Investigation, the Board of Medical Examiners and the Board of

Pharmacy shall report to the House Health and Human Resources Committee and the Senate General Welfare, Health and Human Resources Committee. The reports will make recommendations for legislation needed to address the abuse of Oxycontin. Governor Don Sundquist signed and approved the Bill on April 24, 2002.

GRADUATES OF LEBANESE AMERICAN UNIVERSITY COLLEGE OF PHARMACY (LAU)

Dr. Kendall Lynch advised the members that the Board of Directors for the American Council on Pharmaceutical Education announced the Pharm. D. degree program of the Lebanese American University met the standards for accreditation. Director Lynch mentioned T.C.A. §63-10-506 (d) and Rule 1140-1-.03 (2) would be affected by the ACPE decision. Dr. Lynch asked that this matter be referred to the Ad Hoc Rules Committee for discussion.

2002 DISTRICT III MEETING - LOUISVILLE, KY AUGUST 4 - 6, 2002

Director Kendall Lynch and Mrs. Barbara McAndrew attended the District III meeting in Louisville, Kentucky, on August. 4-6, 2002. Dr. Lynch stated one of the topics for discussion included bio-terrorism response and how pharmacists would be involved in the process.

APRIL SIMMONS, DPH – INFORMAL CONFERENCE W/ ATTORNEY, WALTER FITZGERALD, DPH

Dr. Walter Fitzgerald and Dr. April Simmons met with Dr. Robert Shutt, Dr. John Beauregard, and legal counsel, Ms. Alison Zane for an Informal Conference. Counsel Alison Zane stated the Informal Conference was conducted pursuant to T.C.A. §63-10-505. Ms. Zane informed the Board that Dr. Simmons pled guilty to writing prescriptions and using a fictitious name to obtain controlled substances. Dr. Simmons stated co-dependency and depression were the reasons for her actions. Dr. Simmons criminal probation will end March 23, 2004. Legal counsel, Ms. Alison Zane recommended that Dr. Simmons continue her probation until March, 2003 and

not have a DEA waiver.

then place her license on five (5) year's probation in addition to the Board of Pharmacy's usual terms. In May, 2003, Dr. Simmons would need to appear before the Board regarding urine screens, reports from doctors referencing medications, and informing employers that she does

Dr. Robert Shutt motioned that **to suspend the license until May 2003 at which time Dr. Simmons may petition the Board for reinstatement with no guarantees.** Dr. Julie Frazier seconded the motion. All were in favor and the motion carried.

RIGHT CHOICE PHARMACY TONGANOXIE, KS

Director Kendall Lynch informed the Board that Right Choice Pharmacy is a modified central fill pharmacy advertising on the internet. Right Choice receives the prescription orders from their member pharmacists and the public via the Internet and returns the prescription to the community pharmacy for dispensing. The community pharmacist counsels the patient on the correct use of the medication and dispenses the prescription to the patient. The names of both pharmacies appear on the label. Right Choice is in the process of completing a non-resident pharmacy application, as they are not currently licensed. The matter is being referred to the Ad Hoc Rules Committee to determine compliance with the Board of Pharmacy laws and rules.

NOVEMBER 19 - 20, 2002 - BOARD OF PHARMACY MEETING

Dr. Alan Corley advised Director Kendall Lynch that the election of officers needed to be placed on the agenda for the November 19 - 20, 2002 board meeting.

Dr. Kendall Lynch stated the pharmacy technician rules were tentatively scheduled before the Government Operation Committee on November 19, 2002.

Dr. Kendall Lynch is seeking items to be placed on the agenda for the Triparite meeting on

October 24 - 25, 2002.

ADJOURNMENT

Dr. Alan Corley adjourned the Board of Pharmacy meeting on Tuesday, September 24, 2002 at 4:05 p.m. CDT.

RECONVENED

The Board of Pharmacy reconvened on Wednesday, September 25, 2002, at 9:10 a.m. CDT in Room 160 of the Davy Crockett Tower. President Alan Corley called the meeting to order. All members were present.

COMPLAINTS

1. Case No.: L01-PHR-RBS-200103090

The complaint is against the pharmacist on duty and the pharmacist in charge. The allegation is that one of the pharmacists misfilled a prescription for Prenate with Parnate, which is an antidepressant. The patient was eight (8) months pregnant. The patient took the drug for approximately thirty (30) days before the error was discovered. The patient contends that she was never counseled about the effects of the drug she was receiving. The pharmacy has a log with the patient's signature on it on the date of the misfill, but it does not indicate whether or not the patient was offered counseling and it as accepted. Also, the pharmacy did not report to the board a change in the pharmacist in charge. The Board previously voted on this matter to send a consent order to the pharmacist on duty with a civil penalty of \$250.00 and a consent order to the pharmacist in charge with a civil penalty for \$300.00. Neither pharmacist would sign the consent orders with any admission as to their conduct in case there is a civil action. A letter was received from the pharmacy's attorney with several changes to the language in the consent order, one of the most important changes being, that the pharmacist would not admit that the prescription was mistakenly filled with Parnate.

Recommendation: Formal Hearing

Dr. Forrest Parmley recused himself. Dr. Robert Shutt motioned to **issue a Consent**Order with passive language indicating it was a misfill with the same civil penalties
as previously charged. Dr. Reggie Dilliard seconded the motion. Dr. Sheila Mitchell
was out of the room. The motion carried.

2. Case No.: L02-PHR-RBS-200208706

The complainant wanted an early refill for a controlled substance prescription for

Clonazepam. The complainant alleges that she was humiliated by the pharmacists because they called her doctor to get his permission for the early refill. The complainant used approximately fifty (50) pills within thirty (30) days and she was wanting more. The pharmacist called the doctor himself and got permission for the early refill and had the doctor speak to the complainant. The pharmacist then refilled the prescription. There appears to be no violation.

Recommendation: Dismissal

Dr. Robert Shutt motioned **to dismiss** the complaint; seconded by Mrs. Barbara McAndrew. Dr. Sheila Mitchell was out of the room. The motion carried.

3. Case No.: L01-PHR-RBS-200105287

Complainant alleges that he had his prescription for Clorazepate re-filled for his tremors. In the morning, he took what he thought was the Clorazepate and took his blood pressure medication, Diovan. Toward the end of the day, the Complainant was not feeling well. When he inspected the pills, he noticed that they were different. He called the pharmacy and described the pills; he was told he was not given his tremor medication, but he was given another blood pressure medication. Pharmacist admitted the error.

Recommendation: Consent Order with civil penalty of \$500.00

Dr. Reggie Dilliard motioned to issue a **Letter of Warning for the misfill to the pharmacist, no civil penalty assessed.** Mrs. Barbara McAndrew seconded the motion. All were in favor and the motion carried.

4. Case No.: L01-PHR-RBS-200105835

Complaint indicates that thirty-four (34) of the eighty-four (84) Baker cells in use were out of date or the dates were not on the container and the containers were not air tight. It is also alleged that there were unlabeled or insufficiently labeled drugs on the shelves. The pharmacist in charge admits the violation and has informed us that the violation has been corrected.

Recommendation: Consent Order with \$100.00 civil penalty

Dr. Forrest Parmley motioned to accept counsel's recommendation for a consent order to the PIC. Dr. Robert Shutt seconded the motion. All were in favor and the motion carried.

5. Case No.: L01-PHR-RBS-200105843

Complainant alleges that there have been five (5) medication errors in the past six (6) months, such as receiving the wrong strength of Lotrel on two (2) occasions and

receiving another person's medicine. The pharmacist admitted that he gave the complainant the wrong strength of Lotrel twice. Upon information and belief, the medication errors did not result in any harm to the complainant. The pharmacist stated that to remedy the situation, they are counseling the pharmacy technicians to check strengths of medicine and checking coming in and going out of the pharmacy more closely.

Recommendation: Consent Order with a civil penalty of \$500.00

Dr. Julie Frazier motioned to issue a **Letter of Warning to the PIC**; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

6. Case No.: L02-PHR-RBS-200208219

Complainant alleges that the pharmacist misfilled the patient's prescription. The complainant received two (2) bottles of Spironolactone 100mg. However, one of the bottles was labeled "Atenolol 100 mg". The pharmacist admits that he mistakenly placed Spironolactone in the Atenolol bottle. The error was detected before any of the pills were consumed by the patient.

Recommendation: Consent Order with civil penalty of \$250.00

Dr. Reggie Dilliard motioned to issue a **Letter of Warning to the pharmacist**; seconded by Dr. Robert Shutt. All were in favor and the motion carried.

7. Case No.: L02-PHR-RBS-200208705

Complaint alleges that the pharmacist (PIC) has failed to counsel patients when they pick up their prescriptions. Two (2) investigators observed several patients picking up prescriptions; they were not counseled and the pharmacist (PIC) did not make an offer to counsel the patients. The PIC admits that this was occurring when the investigators brought it to her attention. The PIC has made attempts to remedy the situation by meeting with the pharmacy staff and reducing the proper procedures for counseling patients to writing for the staff.

Recommendation: Consent Order with civil penalty of \$100.00

Dr. Robert Shutt motioned **to accept counsel's recommendation for the PIC**; seconded by Mrs. Barbara McAndrew. All were in favor and the motion carried.

8. Complaint Number: 200208717

The complainant is the child of the patient. The complaint picked up prescriptions for the patient which was for Neosporin GU Irrigant. Instead, the bag contained 37 vials of Lorazepam injection. The complainant alleges that the pharmacist did not offer any

counseling for the new prescription. The pharmacists in the store did respond; however, based on their responses we cannot determine if the complainant was counseled or not or if counseling was offered to her. The pharmacist states that the error did occur in that the complainant was given the wrong bag of medication and he stated that the mix-up occurred because a duplicate receipt for the Neosporin GU Irrigant was attached to the bag of Lorazepam by mistake. The pharmacist claims that both prescriptions were filled correctly, but a duplicate receipt was put on the wrong bag.

Recommendation: Letter of Warning

Dr. Reggie Dilliard motioned **to accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

9. Case No.: L99-PHR-RBS-199900587

This is a 1999 case alleging that the pharmacist misfilled a prescription. As a result of the misfill, the patient died. The misfill was admitted by the pharmacist. The prescription called for an anti-anxiety medication called Alprazolam and instead the pharmacists filled the prescription with Glyburide which is a diabetic medication. The patient lost consciousness, fell into a coma and died because her blood sugar level went down to 20. The pharmacist's license is still active, but the licensee roster indicates that he is not working.

Recommendation: Formal Hearing

Dr. Reggie Dilliard motioned **to accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

10. Case No.: L96-PHR-RBS-8028, L98-PHR-RBS-9319

In the first case entitled **number 8028**, it is alleged that the pharmacist stabbed his girlfriend. Criminal charged against the pharmacist were dismissed because the girlfriend did not pursue them.

In the second case entitled **number 9319**, the complaint alleges that the pharmacy was open for business without a pharmacist on duty. There are also allegations against the pharmacist (PIC) stating that the PIC filled many prescriptions for legend drugs and controlled substances and no prescriptions could be found. Also, 1,016 units of a

Schedule IV Controlled Substance were missing from the pharmacy and there is a video tape showing the PIC removing the substance from the shelves.

Recommendation: Formal Hearing

Dr. Robert Shutt motioned to accept the recommendation of counsel for a formal

hearing; seconded by Dr. Reggie Dilliard. All were in favor and the motion carried.

11. Case No.: L00-PHR-RBS-200002465

Complaint alleged that a record of the prescriptions being filled were not being maintained properly because the prescriptions were being imaged or being scanned in. The prescriptions were being maintained in the order that they were filled and not sequentially.

Recommendation: Dismissal against the pharmacy because they are out of business and against pharmacist.

Dr. Reggie Dilliard motioned **to dismiss** the complaint; seconded by Dr. Robert Shutt. All were in favor and the motion carried.

12. Case No.: L00-PHR-RBS-200003169

The complainant alleges that the patient consulted with the pharmacist about a prescription filled by another pharmacist. The prescription was incorrect and the mistake was never caught. The subject pharmacist refilled this prescription several times subsequent to the initial consultation. The prescription should have been filled with Esgtratest .0625mg and it was mistakenly filled with Estratest 1.25mg. The Board previously voted for a civil penalty of one thousand dollars (\$1000.00) against the pharmacist and a letter of reprimand against the pharmacy. The pharmacy is out of business and the pharmacist does not have an active license and upon information and belief, has retired.

Recommendation: Board should reconsider its previous action. Dismissal against the pharmacy and a letter of warning to the pharmacist.

Dr. Sheila Mitchell motioned **to dismiss** the complaint; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

13. Case No.: L98-PHR-RBS-8902

The complaint alleges that the pharmacist was the PIC. It is alleged that the PIC failed to report to the Board about the loss of a legend drug and/or controlled substances. The Board previously voted to send the PIC a Consent Order to suspend the PIC's license for a period of two (2) years and then staying twenty-three (23) months and fifteen (15) days

of the suspension period and placing the PIC on probation for that amount of time. The Board further voted that during the period of probation, the PIC shall not serve as the pharmacist in charge and the PIC shall pay a civil penalty of \$1,750.00.

Recommendation: Letter of Reprimand

Dr. Robert Shutt motioned for a **Formal Hearing**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

14. Case No.: L99-PHR-RBS-199901237

The complaint alleges that in 1968, the pharmacist was convicted of six (6) counts of fraud. It is alleged that the pharmacist did not disclose this on his Georgia application to practice pharmacy. The State of Tennessee gave him a license through reciprocity from Georgia. There is also an allegation that the pharmacist was also convicted of a class A misdemeanor of tampering with governmental records. He was placed on unsupervised probation with the conditions that he shall not violate the law and shall not practice criminal law in a certain county. The pharmacist's Tennessee pharmacy license has expired and he has also let his license to practice pharmacy in Georgia expire.

Recommendation: Formal Hearing (Consent Order where if he reactivates his license, he will appear before the board and agree to be placed on probation for a period of 1 year).

Dr. Sheila Mitchell motioned to issue a Consent Order whereas if the pharmacist reactivates his license, he will need to appear before the board. Dr. Julie Frazier seconded the motion. All were in favor and the motion carried.

15. Case No.: L99-PHR-RBS-199900093 199900095

Two (2) pharmacists are involved with this complaint. Both pharmacists signed a plea agreement with the United States Government, pleading guilty to one misdemeanor count of Federal Health Care Program Fraud. They were sentenced to one year probation with many conditions, one of which was that he would be on house arrest for four (4) months and he was required to pay a fine. The Pharmacists were involved in a money laundering scheme in which they stole money that was intended to pay for TennCare prescription drugs. The Board previously authorized that Consent Orders be sent to both pharmacists offering a suspension for two (2) years and then staying one (1) year of that suspension during the Pharmacist's good behavior. In response to the Consent Order, both pharmacists, through their respective attorneys, stated that they are rejecting the Consent Orders. Both counter-offered with a Consent Order stating that they would agree to be on probation for a period of two (2) years retroactive to November 26, 2001 (Date of Judgment) until November 25, 2003. The Pharmacist would also agree not to practice pharmacy during the remainder of the probationary period. The Pharmacist has not practiced since November 26, 2001.

Recommendation: Formal Hearing

Dr. Reggie Dilliard motioned to proceed with the formal hearing and charges;

seconded by Dr. Julie Frazier. All were in favor and the motion carried.

16. Case No.: L02-PHR-RBS-200102308

The complainant alleges that the pharmacist engaged in unprofessional conduct. More specifically, complainant alleges that the pharmacist stated in front of other customers, that she questioned the legitimacy of the prescription. The pharmacist called the doctor to verify the prescription and it was in fact, a legitimate prescription; however, the complainant was embarrassed.

Recommendation: Dismissal

Dr. Robert Shutt motioned **to dismiss** the complaint; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

17. Case No.: L00-PHR-RBS-200002267

Complaint alleges that the pharmacist was convicted of four (4) counts of Medicaid fraud. The pharmacist plead guilty to the four (4) counts of Medicaid fraud and was sentenced to one (1) year of unsupervised probation and ordered to pay the State of Tennessee \$11,000.00 for fraudulent billing and misrepresentation of services.

Recommendation: Formal Hearing

Dr. Robert Shutt motioned **to accept counsel's recommendation for authorization of a formal hearing with a Consent Order for suspension of license**. Mrs. Barbara McAndrew seconded the motion. All were in favor and the motion carried.

18. Case No.: L01-PHR-RBS-20002465

The pharmacist was disciplined by the Georgia State Board of Pharmacy and received a five (5) year probation term commencing April 19, 2000 to April 19, 2005, under certain conditions. Pharmacist entered a guilty plea in Georgia for failure to keep and maintain records of controlled substance distribution. It appears that the pharmacist is no longer licensed to engage in the practice of pharmacy in the State of Tennessee. The pharmacist did not notify Tennessee that he was disciplined by another state when it appears that his Tennessee license was active from 10/99 to 11/01.

Recommendation: Formal Hearing (Consent Order with a civil penalty to him for failing to notify Tennessee that his license was suspended).

Dr. Robert Shutt motioned to issue a Consent Order stating pharmacist will not activate Tennessee license without appearing before the Board. Dr. Reggie Dilliard seconded the motion. All were in favor and the motion carried.

19. Case No.: L98-PHR-RBS-9013 (949155)

Complaint alleges that the pharmacist (PIC) refilled prescriptions excessively for large quantities of controlled substances. It is alleged that the prescriptions were filled for family members and pets. Over one hundred (100) controlled substance prescriptions were dispensed without a DEA license.

Recommendation: Formal Hearing

Dr. Robert Shutt motioned for a **Formal Hearing**; seconded by Dr. Forrest Parmley. All were in favor and the motion carried.

20. Case No.: L01-PHR-RBS-200105564

The subject pharmacist's license (Pharmacists #1) was suspended indefinitely in the State of Georgia with several conditions including entering a drug treatment program and therapy. Pharmacist #2 is another pharmacist licensed in the State of Tennessee bearing a very similar name. In a prior meeting, the Board voted to have Pharmacist #2 sign a Consent Order for the surrender of her license due to chemical dependency and not the subject pharmacist. The minutes of the Board meeting reflect Pharmacist #2's name. However, when the Consent Order was sent to Pharmacist #1, it had Pharmacist #2's name on it. Pharmacist #1 signs it and sends it back to us.

Recommendation: Board to reconsider its vote regarding Pharmacist #2. Board to vote again and have the minutes reflect a Consent Order vote on Pharmacist #1. Have the Board refuse to accept the Consent Order.

Dr. Sheila Mitchell motioned **to accept counsel's recommendation**; seconded by Dr. Robert Shutt. All were in favor and the motion carried.

21. Case No.: L00-PHR-RBS-200006541

Complaint was initiated through a routine inspection in which the investigator saw that the pharmacist technician was failing to offer to have the pharmacist counsel a patient about a drug the patient was taking. Upon questioning, the technician told the investigator that the offer to counsel patients only had to be made for new prescriptions. PIC responded stating that he will explain the rule regarding patient counseling. At the April 11, 2001 meeting, the Board voted to send the pharmacist a Consent Order with a civil penalty against the pharmacy for five hundred dollars (\$500.00) and civil penalty against the pharmacist for one hundred dollars (\$100.00). Pharmacist did not sign the order. It appears that the pharmacist called the Board's prior staff attorney and asked to have the Board reconsider their action for a Consent Order. Then, an August 22, 2002 letter was sent to the pharmacist asking him to write a letter requesting reconsideration. A letter was never received.

Recommendation: Reconsideration of prior action. Informal Conference.

Dr. Forrest Parmley motioned to defer to the November 2002 meeting; seconded by Dr. Robert Shutt. All were in favor and the motion carried.

22. Case No.: L02-PHR-RBS-200207748

The complaint alleges that the pharmacist did not use the coupons that she provided to pay for her prescription drugs. Complaint also alleges that the coupons would not process and the pharmacist refused to check on the coupons that appeared to be invalid and would not give the complainant the complainant's prescriptions back. The Complainant wanted the prescriptions returned back to her by mail. The pharmacist replied that all of the coupons cleared through the Pharmacy Benefits Manager, except for one. Pharmacist alleges that she was told to come back later and they would work on it. Complainant does not want to come back later because she lives fifteen (15) miles away. Pharmacist also stated that he tried to return her prescriptions back to her by mail, but they came back to the pharmacist because it was the wrong address. The pharmacist also tried to call the complainant at home with the phone number provided to them, but it was out of service. The pharmacist intended to attempt to return the prescriptions at the address listed on the complaint form.

Recommendation: Dismissal

Dr. Robert Shutt motioned **to dismiss** the complaint; seconded by Dr. Forrest Parmley. All were in favor and the motion carried.

23. Case No.: L01-PHR-RBS-200105562

This complaint was initiated upon notification that the pharmacist was the subject of disciplinary action in the State of Georgia. The pharmacist's license was suspended for five (5) months in 1998 and then reinstated without any conditions or limitations. The pharmacist was not licensed to practice pharmacy in the State of Tennessee until July, 1999, so this did not affect her Tennessee license. Also, the pharmacist did disclose the suspension on her application for Tennessee license to practice pharmacy. There does not appear to be a violation.

Recommendation: Dismissal

Dr. Julie Frazier motioned **to dismiss** the complaint; seconded by Dr. Robert Shutt. All were in favor and the motion carried.

24. Case No.: L99-PHR-RBS-199900089

The complaint alleges that the pharmacist had illegal possession of several drugs. He had the drugs, including controlled substances, in unlabeled prescription bottles. The drugs in

the pharmacist's possession include Disopyramide, Claritis, Pseudoephedrine, Desipranine, Prozac, Propoxyphene, Hydrocodone, Cimetidine. It is alleged that the pharmacist was also working with an expired license. Upon information and belief, this pharmacist was convicted of possession of controlled substances and sentenced to three (3) years probation.

Recommendation: Formal Hearing

Dr. Robert Shutt motioned for a **Formal Hearing for a Consent Order to suspend the pharmacist license**; seconded by Mrs. Barbara McAndrew. All were in favor and the motion carried.

25. Case No.: L01-PHR-RBS-200105563

The complaint was initiated based on notification that the pharmacist was disciplined by the State of Georgia. The Georgia Pharmacy Board indicates that the pharmacist was disciplined in 1986 by suspending his license for eighteen (18) months and then stayed the suspension and placed him on three (3) years probation with terms of additional continuing education classes, notifying all future employers of the Decision and submitting quarterly reports to Georgia. The pharmacist was also required to pay a \$500.00 civil penalty. It appears that there are no other complaints in Tennessee against this pharmacist.

Recommendation: Dismissal

Dr. Reggie Dilliard motioned **to dismiss** the complaint; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

26. Case No.: L02-PHR-RBS-200207187

This complaint was originated after routine inspection of the pharmacy where the pharmacist in charge was working. The inspector noticed that the pharmacist's license was expired. The pharmacist admitted that he failed to renew his license because he did not have the required live continuing education hours. The Pharmacist is currently living in Colorado, but did make up those live continuing education hours in Tennessee before the move out of state. The Board previously voted on this matter to send the pharmacist a Consent Order requiring that he pay a civil penalty of \$300.00 and to complete his continuing education requirements. The Consent Order was received, but it was not signed by the pharmacist.

Recommendation: Letter of Reprimand

Dr. Reggie Dilliard motioned to reaffirm the Board's previous decision and re-send the Consent Order. Dr. Sheila Mitchell seconded the motion. All were in favor and the motion carried.

27. Case No.: L02-PHR-RBS-200209115

The complaint originated from criminal charges against the pharmacist for identity theft, conspiracy to commit prescription fraud and conspiracy to sell and deliver Lortab and Xanax. All criminal charges were dismissed.

Recommendation: Dismissal

Mrs. Barbara McAndrew motioned **to accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

28. Case No.: L99-PHR-RBS-199901533

The complaint alleges that the pharmacist was practicing medicine without a license. He allegedly wrote and signed thirty (32) prescriptions for controlled substances. It is also alleged that the pharmacist conducted physical examinations of patients, ordered laboratory tests, x-rays and EKGs and developed treatment plans for the patients.

Recommendation: Formal Hearing

Dr. Reggie Dilliard motioned **to accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

29. Case No.: L02-PHR-RBS-199901964

This complaint was originally brought before the Board in March, 2000 at which time the Board decided to dismiss the case because of the lack of evidence that there was a misfill. This matter is being re-opened at the Complainant's attorney's request with additional information about the alleged misfill. It was originally alleged that the prescription was written for Carbidopa/Levodopa 25/100 mg and the prescription was filled with 25/250 mg. The patient took the 250 mg pills and experienced involuntary muscle spasms and hallucinations. The patient was hospitalized for two (2) days. Before the incident the patient could walk with the aid of a walker, now the patient cannot walk.

Recommendation: Formal Hearing

Dr. Forrest Parmley motioned **to defer until additional information is obtained**. Dr. Robert Shutt seconded the motion. All were in favor and the motion carried.

30. Case No.: L02-PHR-RBS-200103860

The complaint alleges that the pharmacist in charge filled or refilled 135 invalid prescriptions for two (2) patients. It appears that the prescriptions were for hydrocodone. The physicians who were named on the prescriptions did not write the prescriptions.

Recommendation: Formal Hearing

Dr. Robert Shutt motioned for a **Formal Hearing**, seconded by Dr. Reggie Dilliard. All were in favor and the motion carried.

31. Case No.: L02-PHR-RBS-200006149

In 2000, this pharmacist plead guilty to defrauding the Kentucky Medical Assistance Program in excess of \$10,000.00, which is a felony. The pharmacist was given three (3) years of probation from September 29, 2000 to September 29, 2003. The pharmacist's license to practice pharmacy in the Kentucky was revoked for five (5) years.

Recommendation: Formal Hearing (A Consent Order revoking his license in the State of Tennessee for five (5) years based on his revocation in Kentucky).

Dr. Robert Shutt motioned to accept counsel's recommendation with stipulation that pharmacist must appear before the Board to receive his Tennessee license. Dr. Julie Frazier seconded the motion. All were in favor and the motion carried.

32. Case No.: L99-PHR-RBS-1999014651 & L98-PHR-RBS-9810

This 1999 complaint alleges that his prescription for Glucophage and Acetominophin with codeine was given to the wrong person. The customer went to go and pick up his pills and they were already given to someone else. It appears that some random person used the customer's name and picked up his pills. The Board previously voted to send the pharmacist an agreed order with a \$50.00 civil penalty for failing to reply. However, it was subsequently determined that the pharmacist never received the complaint because of a change of address. Another complaint alleges that the pharmacist told a customer that he picked up his medicine when he had not. No response from the pharmacist.

Recommendation: Reconsider previous action and reopen the file, hand deliver the complaint and ask the pharmacist to respond to the allegations. Regarding the second complaint, hand deliver the complaint and ask the pharmacist to respond.

Dr. Sheila Mitchell motioned to accept counsel's recommendation to hand-deliver the two (2) complaints. Mrs. Barbara McAndrew seconded the motion. All were in favor and the motion carried.

33. Case No.: L00-PHR-RBS-200004613

After a Board of Pharmacy Investigator made an inspection of the pharmacy, he saw that the pharmacy was being operated by an unlicensed technician for approximately thirty (30) minutes. There was no sign posted that the pharmacists was not present. During the thirty (30) minutes time, the technician gave a previously filled prescription to a

customer. After this incident, the subject pharmacist resigned as the pharmacist in charge. The Board previously voted to send a Consent Order to the pharmacist with a civil penalty for \$1,000.00. The Consent Order was not executed.

Recommendation: Letter of Warning

Dr. Reggie Dilliard motioned for a **Formal Hearing with a Consent Order**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

34. Case No.: L01-PHR-RBS-200102361

Complaint alleges that the pharmacist in charge was excessively filling controlled substances prescriptions for a patient that were written by a veterinarian.

Recommendation: Formal Hearing

Dr. Robert Shutt motioned for a **Formal Hearing**; seconded by Mrs. Barbara McAndrew. All were in favor and the motion carried.

35. Case No.: L02-PHR-RBS-200208908

Complainant is the child of the patient. Complainant alleges that a misfill occurred where the patient was given a prescription of Prilosec 20mg instead of Prozac 20mg. The Prilosec was not consumed by the patient. The pharmacist admits the error.

Recommendation: Formal Hearing (Consent Order with a civil penalty).

Dr. Reggie Dilliard motioned for a **Letter of Warning**; seconded by Dr. Robert Shutt. All were in favor and the motion carried.

36. Case No.: L02-PHR-RBS-200209041

The complainant is a physician. Complaint alleges that there are possibly forged prescriptions for controlled substances filled by two (2) different pharmacies. However, upon investigation of this matter, the prescriptions were valid and hard copies of the prescriptions were on file at the pharmacy. It appears that the pharmacist or the pharmacy technician inadvertently put in the wrong doctor's DEA number in the computer or the DEA number was entered incorrectly in the pharmacy's computer database.

Recommendation: Dismissal

Dr. Forrest Parmley motioned **to accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

37. Case No.: L02-PHR-RBS-200100198

Pharmacist plead guilty to charges of tampering with evidence, insurance fraud, theft of property in September, 2001. Pharmacist was placed on probation for four (4) years. The pharmacist was also subject to federal charges for failing to maintain the recordkeeping requirements for the Controlled Substances Act. A judgment has been entered against the pharmacist and it is anticipated that he was assessed approximately \$364,000.00 in penalties.

Recommendation: Formal Hearing

Dr. Sheila Mitchell motioned for a **Formal Hearing – consent order for suspension of license and must appear before the Board to be reinstated**; seconded by Dr. Julie Frazier.

Dr. Mitchell made a **friendly amendment to the motion to include both the pharmacist and pharmacy license.** Dr. Julie Frazier seconded the friendly amendment.

On the original motion, all were in favor and the motion carried.

The original motion as friendly amended, all were in favor and the motion carried.

38. Case No.: L01-PHR-RBS-200005953

The complaint alleges that the pharmacist misfilled a prescription for morphine to be used in an interthecal spinal pump for chronic pain sufferers. When the pharmacist compounded the substance, he used methadone instead of morphine. Eight (8) patients were administered the drug containing methadone and after using the drug, they all required medical attention, three (3) of which required hospitalization. Many, if not all, of the patients suffered damages and some suffered permanent disabilities.

Recommendation: Formal Hearing

Dr. Sheila Mitchell motioned for a **formal hearing and charges, unless the original Consent Order is signed;** seconded by Dr. Julie Frazier. All were in favor and the motion carried.

39. Case No.: L98-PHR-RBS-9877 (951414)

The complaint alleges that the complainant ordered a refill prescription for his mother by phone. It is alleged that the pharmacist put the correct pills in the properly labeled bottle, but just refilled the wrong medication. The complainant's mother is on three (3) different medications. It is also alleged that the pharmacy had difficulty locating the complainant's mother's files, but then found them. Lastly, the complainant alleges that it takes too long to get his prescriptions filled.

Recommendation: Dismissal

Dr. Robert Shutt motioned **to dismiss** the complaint; seconded by Dr. Forrest Parmley. All were in favor and the motion carried.

40. Case No.: L01-PHR-RBS-200104022

The complaint alleges that during an inspection, one of our investigators determined that there was a violation of the pharmacists/ technician ratio in the pharmacy in that five (5) technicians and one (1) intern was working and only one (1) supervising pharmacist. The Board previously voted to send the pharmacist/owner a Consent Order with a civil penalty of \$1,000.00. The pharmacist wrote back stating that they did violate the rule, but that the violation occurred because he has prostate cancer and had to have immediately surgery. The pharmacist asks the board to reconsider.

Recommendation: Board's discretion

Dr. Forrest Parmley motioned **to reaffirm the Board's previous decision**; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

41. Case No.: L00-PHR-RBS-200002471

The complaint alleges that the pharmacist was in violation of the pharmacist/technician ratio. An inspection revealed that one (1) pharmacist was supervising three (3) technicians and two (2) interns. In response, the pharmacist admitted to the violation, but contended that the violation occurred because he was only out of the pharmacy temporarily. The Board previously voted to send the pharmacist a Consent Order with a civil penalty of five hundred and fifty dollars (\$550.00). I recently received a phone call from the pharmacist about the Consent Order that was sent to him and he stated to me that he could not pay the civil penalty; he is not currently working and he has a sick grandchild. He requested that I bring this matter before the board for reconsideration.

Recommendation: Board's discretion

Dr. Forrest Parmley motioned to reaffirm the Board's previous decision and should the pharmacist not sign the Consent Order, to proceed with a formal hearing. The one (1) hour does not exclude the technician ratio. Dr. Reggie Dilliard seconded the motion. All were in favor and the motion carried. President Alan Corley stated if there were financial difficulties, arrangements could be established.

42. Case No.: L01-PHR-RBS-200105100

The Complainant alleges that the pharmacy did not put the amount of the Complainant's refills in the computer correctly. Apparently, the Complainant claims that he gave his prescriptions to the pharmacy and asked them to hold on to them until he could get the refill. Allegedly, the pharmacy said that they could do that. Complainant alleges that

when complainant went to get the refills, the pharmacy did not have them in the computer. The PIC responded that when the complainant came to the pharmacy, they did not have any active prescriptions on file for the patient. The PIC also stated that they called the other pharmacy where the prescriptions were allegedly transferred and they had no record of them. PIC also called the prescribing physician who refused to call in any more medications. When this was relayed to the complainant, he became verbally abusive, profane and threatened physical violence.

Recommendation: Dismissal

Dr. Robert Shutt motioned **to dismiss** the complaint; seconded by Mrs. Barbara McAndrew. All were in favor and the motion carried.

43. Case No.: L98-PHR-RBS-950500

The pharmacist has filled over five hundred (500) forged prescriptions; pharmacists knew that the prescriptions were forged. Pharmacists would fill 90 pills of 10mg Hydrocodone for the same patient every one (1) to two (2) days. The pharmacist also accepted copies of prescriptions that had a patient name "whited-out" and prescriptions that were photocopied with different patient names on them.

Recommendation: Formal Hearing

Dr. Robert Shutt motioned for a **Formal Hearing**; seconded by Dr. Forrest Parmley. All were in favor and the motion carried.

JOHN BELL, DPH – RECIPROCAL CANDIDATE DISCIPLINED IN WEST VIRGINIA

Director Kendall Lynch advised the Board that Dr. John Bell is a reciprocal candidate from West Virginia and is currently licensed in that state. Dr. Bell was disciplined by the West Virginia Board of Pharmacy. Dr. Bell entered in an Amended Reinstatement Agreement on December 26, 2001 with the West Virginia Board. On June 26, 1996, Dr. Bell admitted to prior substance abuse and entered into a consent order on October 17, 1996. On June 17, 2001, Dr. Bell tested positive for cocaine which violated the terms of his consent order. Dr. Bell voluntarily surrendered his license in July, 2001. In November, 2001, Dr. Bell completed an outpatient program in Morgantown, West Virginia and appeared before the West Virginia Board in

December, 2001 to request reinstatement of his pharmacist license. The West Virginia Board agreed to place the following restrictions on his license for five (5) years:

- 1. Dr. Bell is to participate in a recognized treatment program;
- 2. Dr. Bell is to furnish a letter to the Board verifying completion and his progress;
- 3. Dr. Bell is to attend AA/NA meetings plus recovery group meetings;
- 4. Dr. Bell is only allowed to practice under the supervision of another pharmacist and the PIC is to submit month reports on his job performance, attendance, attitude and professional demeanor;.
- 5. Dr. Bell shall not be designated PIC at any pharmacy in West Virginia;
- 6. Dr. Bell shall submit to random urine screens;
- 7. Dr. Bell is to maintain current residential and place of employment addresses; and.
- 8. Dr. Bell is to limit the use of drugs prescribed by a licensed physician for legitimate purposes.

Dr. Bell stated he entered into a contract in 1996 and was placed on probation for five (5) years. During the probationary period, Dr. Bell stated he tested positive for cocaine in June, 2001. Dr. Bell stated he re-entered a rehabilitation program, which he completed. The West Virginia Board of Pharmacy re-instated his pharmacist license with the stipulation that he had to work under the supervision of a pharmacist for six (6) months, which was reduced to three (3) months. Dr. Bell has been offered a position with Rite Aid in Tennessee for the completion of the three (3) month requirement imposed by the West Virginia Board of Pharmacy. Dr. Bell stated he has furnished Rite Aid with a full disclosure of his disciplinary action. Dr. Bell is requesting reciprocity with Tennessee as West Virginia does not have a PRN organization. Dr. Bell stated he is able to work as a technician and has signed a contract with TPRN. Advocate, Dr. Kenny Archer stated Dr. Bell has complied with the requirements imposed by TPRN, and has completed the 90/90 in West Virginia. Dr. Archer stated the TRPN accepted the 90/90 performed in West Virginia. Director Kendall Lynch stated Dr. William Douglass, Executive Director with the West Virginia Board of Pharmacy will accept the three (3) months' supervision from Tennessee.

Director Lynch stated the Tennessee Board would certify the hours worked to West Virginia.

Dr. Sheila Mitchell motioned to allow Dr. Bell to reciprocate to Tennessee plus meet the requirements of the TPRN and West Virginia contracts. Dr. Robert Shutt seconded the motion. All were in favor and the motion carried.

ADJOURNMENT

President Alan Corley asked for a motion to adjourn the Board of Pharmacy meeting on Wednesday, September 25, 2002 at 2:00 p.m. CDT. Dr. Forrest Parmley motioned to adjourn; seconded by Dr. Reggie Dilliard. All were in favor and the motion carried.

Respectfully submitted,
Alan Corley, President
Kendall M. Lynch, Director